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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

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PP Docket No. 93-253

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NOV 30 1993

REPLY COMMENTS

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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November 30, 1993

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REPLY COMMENTS

BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., and Mobile Communications Corporation of America ("BellSouth"), by their attorneys, hereby provide the following reply comments to the Commission's Notice of Proposed Rulemaking (the "Notice") (FCC 93-455, released Oct. 12, 1993). The sheer volume of the comments filed ^{1/} graphically demonstrates the importance of using "simplicity" and "ease of administration" as the essential premises for instituting the auction process. Proposals that give rise to complexity or needless confusion will result in administrative licensing delays and endless litigation. BellSouth urges the Commission to adopt the competitive bidding procedures outlined in its Comments (amplified herein), that will allow the Commission to initiate PCS licensing on a timely and legally sustainable basis.

As a starting point, there has been no opposition to the use of auctions for awarding PCS licenses. Moreover, the Commission should recognize the widespread consensus by commenters on a number of positions advocated by BellSouth:

^{1/} Approximately 200 initial comments were filed in response to the Notice.

- Open bidding (oral or electronic) is the best way to achieve the statutory objectives, and should be used for awarding the PCS licenses; ^{2/}
- Legitimate pre- and post-application settlement efforts, including the development of bidding consortia, should be encouraged; detailed anti-collusion rules are not needed; ^{3/}
- There is generally no need for anti-trafficking restrictions on transfers and assignments of PCS licenses awarded by auction; ^{4/}
- "Designated Entity" status should be reserved for entities in which eligible parties are truly the principal owners, i.e., hold at least 50.1% of the voting, management and beneficial ownership interests; ^{5/}
- Application forms, filing and processing procedures should be modified to provide simple entry for serious bidders and to avoid overly

^{2/} BellSouth Comments at 4-5; see, e.g., for example, Comments of AT&T at 11-12; American Personal Communications at 1-2; Cellular Communications, Inc. at 1-3; Comcast Corp. at 3-4; U.S. Intelco Networks, Inc. at 8-9; McCaw Cellular Communications, Inc. ("McCaw") at 5-6. Moreover, BellSouth submits that the sealed bid simultaneous auctions approach suggested by some parties (see, e.g., Comments of Pacific Bell, et al. at 11-14; PacTel Corporation at 1-2, 4) should be rejected as unworkable. Such auctions retain most of the problems of sealed bidding generally, particularly the lack of ongoing exchange of competing bidder information. If a group of licenses is auctioned simultaneously, it must be done in an open auction.

^{3/} BellSouth Comments at p. 14-17; see, e.g., Comments of AT&T at 39-40; Cellular Telecommunications Industry Association ("CTIA") at 8-9; Alliance of Rural Area Telephone & Cellular Service Providers at 7-8; NYNEX Corporation ("NYNEX") at 21-22; Telocator at 4-5.

^{4/} BellSouth Comments at 30-33; see, e.g., Comments of Windsong Communications, Inc. at 5-6; Bell Atlantic Personal Communications, Inc. ("Bell Atlantic") at 17-18; Telocator at 14-16; Time-Warner Telecommunications at 4-5.

^{5/} BellSouth Comments at 29; see, e.g., Comments of Liberty Cellular, Inc. at 4; Pacific Telecom Cellular, Inc. at 4-5; Pacific Bell, et al. at 21; Cook Inlet Region at 19-25; Minority PCS Coalition at 4.

burdening eligible entrants and the Commission's staff; ^{6/}

- Substantial upfront payment and deposit requirements should be imposed to discourage speculators and bargain-hunters, but not to a degree that would burden serious bidders. ^{7/}

BellSouth submits that each of these consensus proposals achieves the legislative objectives of the Omnibus Budget Reconciliation Act of 1993 ^{8/} and is easy to administer. As such, adoption of these proposals is clearly in the public interest.

At the same time, the clear lack of consensus on certain key issues proves their complexity and provides a strong basis for rejection at least in the initial PCS auction program. This is particularly true for tentative proposals on combinatorial bidding.

A substantial number of bidders urged outright rejection of combinatorial bidding for several reasons. ^{9/} Even those parties who supported combinatorial bidding

^{6/} BellSouth Comments at 34-40; see, e.g., Comments of AT&T at 29; Comcast Corp. at 16-17; Cox Enterprises, Inc. ("Cox") at 6-8; Pacific Bell, et al. at 21-28.

^{7/} BellSouth Comments at 40-44; see, e.g., Comments of McCaw at 16-18; AT&T at 33-35; Sprint Corp. at 15-19; Southwestern Bell Corp. ("Southwestern Bell") at 38-40. Several parties joined BellSouth in noting the potential burden placed on companies bidding for larger licenses if the FCC's pops x MHz x \$.02 calculation is used. In this regard, one approach worthy of further consideration was suggested by Southwestern Bell: allow parties to meet their upfront payment obligations by the tender of U.S. Treasury notes rather than cashier's checks. This would allow bidders to retain the funds in interest-bearing accounts. See Comments of Southwestern Bell at 38.

^{8/} Pub. L. No. 103-66, 107 Stat. 312 (August 10, 1993).

^{9/} See BellSouth Comments at 6-11; see, e.g., Comments of AT&T at 4-8; Comcast Corp. at 5-7; Sprint Corp. at 4-7; Small Telephone Companies of Louisiana at 7-11; Telocator at 5-7; U.S. Intelco Networks, Inc. at 3, 11-12; Southwestern Bell at 22-28. As these parties discussed in detail, combinatorial bidding introduces uncertainty and substantial complexity into the auction process. It will exclude many bidders and thwart the Budget Act's express objective to encourage the wide dissemination of licenses among a diverse body of applicants. It will also
(continued...)

could not agree on its implementation. Some argued that it should be limited to nationwide combination bids compared to individual MTA bids.^{10/} Others argued against that proposal and instead urged that MTA combination bids be compared to individual BTA bids.^{11/} Still others argued that geographic combinations should not be pre-determined in any fashion and instead should be established by individual bidders.^{12/} Several parties also urged different sequencing approaches for auctioning those licenses subject to combinatorial bidding.^{13/}

The lack of consensus on combinatorial bidding or the "best" method for implementing it speaks volumes about the proposal's complexity and its controversial nature. None of the issues raised by combinatorial bidding can be quickly or easily resolved. Moreover, rejection of combinatorial bidding in the auction rules will not prejudice the aggregation efforts of any combinatorial bidder. Each applicant in the

^{2/}(...continued)

artificially advance one particular aggregation scheme at the expense of a marketplace determination.

^{10/} See, e.g., Comments of Liberty Cellular, Inc. at 2-3; MCI Telecommunications Corp. ("MCI") at 7-8.

^{11/} See, e.g., Comments of Telephone Association of Michigan at 11-12; Minority PCS Coalition at 8-9; American Personal Communications at 2-3.

^{12/} See, e.g., Comments of NTIA at 14-15; Nextel Communications, Inc. ("Nextel") at 10; NYNEX at 1; Ameritech Mobile Communications, Inc. et al. ("Ameritech") at 4-5.

^{13/} See, e.g., Comments of Bell Atlantic at 11-13; CTIA at 16-17; Nextel at 7-8. The timing of announcing combinatorial bids was also subject to considerable debate. Some argued that the sealed combinatorial bids should be opened only after the individual license auctions were completed; others insisted that the sealed bids should be opened and announced before the individual licenses auctions were held; yet others argued that all bids should be sealed and opened at the same time. Some parties even requested the opportunity to bid individually for Block A licenses and as part of a combination bid for Block B, with the option of returning individual Block A licenses to the auction block if the combination Block B licenses were awarded to them (see, e.g., Comments of General Communication Inc. at 4-4; MCI at 10).

open individual auctions will be able to bid for each license it desires to include in its "combination." Trying to implement any combinatorial bidding scheme is likely to result in serious administrative and judicial delays. Given the need to begin PCS license processing by May 7, 1994, combinatorial bidding should be rejected.

One matter raised in the comments does require clarification in the PCS competitive bidding rules. As a number of parties urged, ^{14/} existing cellular carriers must be permitted to bid on PCS licenses even in those geographic areas where they would be ineligible for more than 10 MHz at the time of application. ^{15/} This would give cellular carriers the ability to make appropriate and rational business decisions regarding the provision of PCS service; it would not undermine the cellular ownership restriction in the PCS service. ^{16/} Such bids would be conditioned on the applicants' agreement if they are a winning bidder to divest ownership of the disqualifying interests before the PCS license is issued. If the Commission requires an eligibility certification at the time of application that cannot later be amended, the legitimate participation in PCS by a particularly qualified group of providers would be undermined without public benefits. A clear statement confirming that cellular carriers may participate in all auctions is needed in the order adopting the competitive bidding rules to avoid any uncertainty in this regard.

^{14/} See, e.g., Comments of Bell Atlantic at 5-9; Ameritech at 2; Sprint Corp. at 7. BellSouth urged (Comments at 35-37) that amendments to the applications should be allowed at any time prior to grant to provide a winning bidder the opportunity to cure any defects. This included, in BellSouth's view, the chance to cure eligibility problems.

^{15/} See Section 99.204 of the Commission's Rules.

^{16/} A cellular entity has no guarantee that it will be the winning bidder in any PCS license area. It therefore makes no sense to require it to divest disqualifying cellular ownership interests before it is the successful bidder for a PCS license.

Finally, the need to initiate licensing proceedings for PCS in very short order demands a rational, phased approach to the implementation of competitive bidding regulations. BellSouth therefore agrees with those commenters who have urged the Commission to meet the May 7, 1994 Congressional deadline by applying its open oral bidding rules first to the Narrowband PCS spectrum.^{17/} The Commission could then promptly turn to the auctioning of the Broadband PCS spectrum and other services that it determines should be subject to the competitive bidding process.^{18/}

This approach will allow the Commission to accumulate experience from the open oral Narrowband PCS auction involving licenses of different bandwidths, market densities and service area sizes. The Commission would be well served with such experience in considering other alternatives or necessary changes in implementation methods for adoption in future auctions.^{19/}

^{17/} See, e.g., Comments of AT&T at 10; McCaw at 5. Narrowband PCS involves a large number of generally comparable licenses, valued relatively equally in currently unoccupied spectrum. The knowledge and experience gained from these early auctions for less valuable spectrum would greatly assist the Commission in resource planning for later auctions of the higher valued, more complex Broadband PCS spectrum.


^{18/} Given the overwhelming consensus that so-called "intermediate links" should not be auctioned, the Commission should also reject this tentative conclusion. (BellSouth Comments at 45-46); see, e.g., Comments of American Personal Communications at 8-10; Ameritech at 2-4; Cablevision Industries Corp., *et al.* at 7-10; California Microwave, Inc. at 1-7; Cox at 8-9; Rochester Telephone Corp. at 5-7; Southwestern Bell at 6-12; Telephone and Data Systems, Inc. at 4-5; Utilities Telecommunications Council at 7-8.

^{19/} The Commission had a similar maturation process in dealing with the cellular lotteries. Thus, it moved from procedures in which it required and pre-screened long-form filings from all applicants to one in which post-card filings are now used; the Commission also modified applicant qualification requirements, e.g., financial showings.


BellSouth urges the Commission to adopt the auction proposals submitted here and in its earlier-filed comments.

Respectfully submitted,

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Dated: November 30, 1993

CERTIFICATE OF SERVICE

I, Jo-Ann Grayton, hereby certify that on this 30th day of November 1993, I caused to be sent by first-class mail, postage prepaid, copies of the foregoing Reply Comments to the individuals on the attached service list.


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